

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 400 – SB 1277

April 6, 2015

SUMMARY OF ORIGINAL BILL: Authorizes a judge to allow into evidence in criminal cases testimony from a witness if the testimony (1) was previously recorded, or (2) is by live video transmission during the trial.

Evidence submitted from previously recorded testimony must (a) consist of a video in which the accused was present with counsel in the presence of the judge while the testimony was being recorded; (b) accurately reflect that both witness and accused were able to view and hear each other; and (c) sufficiently enable the judge or jury to observe the witness during the testimony.

Evidence submitted from live video transmission during the trial must (a) be transmitted in such a manner that the witness and the accused can see and hear each other during testimony; (b) sufficiently enable the judge or jury to observe the witness during the testimony; and (c) accurately record that the witness and accused were face to face during the video-transmitted testimony.

Such video evidence is the only allowed recording of a witness testimony when the witness is unavailable under the rules of evidence, the witness is deployed on orders from the Governor of Tennessee or the President of the United States, good cause exists to excuse the witness from personally appearing before the court, and the witness has not testified in a prior proceeding.

Before allowing the evidence, the judge must make specific findings that the witness is unavailable under the rules of evidence; the witness has been deployed; another reason exists and it is in the best interests of justice or constitutes good cause; the witness is under oath and competent to testify; the testimony can be sufficiently recorded or transmitted at a hearing or trial; the testimony is recorded or transmitted so the witness and accused can view each other; and the video recording or transmission allows for a full and fair opportunity for cross-examination.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$22,500/District Attorneys/General Fund
\$22,500/Indigent Defense Fund

Increase Local Expenditures – \$950,000/One-Time*

SUMMARY OF AMENDMENT (005934): Deletes all language after the enacting clause.

HB 400 – SB 1277

Authorizes a judge to permit the use of live-transmitted testimony in lieu of a personal appearance when the judge determines that a witness is unavailable under the rules of evidence, or the witness is deployed pursuant to orders of the Governor or the President of the United States.

The judge must make specific findings that (1) the witness is unavailable under the rules of evidence or the witness has been deployed; (2) the witness under oath and is competent to testify; (3) the testimony can be transmitted at a hearing or trial so that the judge and jury can sufficiently observe the witness during the testimony; (4) the testimony can be transmitted so that the witness and the accused can view each other during the testimony; (5) the video transmission allows for a full and fair opportunity for cross-examination; and (6) any other relevant factor ensures the interests of Article I, § 9 of the Tennessee Constitution are satisfied.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- The bill authorizes judges to permit video-streamed testimony in certain cases.
- The bill does not require judges to permit this evidence. Therefore, it does not require courts to have video-streaming technology in each courtroom.
- It is assumed that any impact to the Administrative Office of the Courts can be accommodated within their existing resources.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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